

106-65, as amended, set out as an Effective Date note under section 8440e of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, with provisions for certain funds to be offered for investment at earliest practicable election period, see section 101(f) [title VI, § 659 [title I, § 104]] of Pub. L. 104-208, set out as a note under section 8438 of this title.

§ 8440. Tax treatment of the Thrift Savings Fund

(a) For purposes of the Internal Revenue Code of 1986—

(1) the Thrift Savings Fund shall be treated as a trust described in section 401(a) of such Code which is exempt from taxation under section 501(a) of such Code;

(2) any contribution to, or distribution from, the Thrift Savings Fund shall be treated in the same manner as contributions to or distributions from such a trust; and

(3) subject to section 401(k)(4)(B) of such Code and any dollar limitation on the application of section 402(a)(8) of such Code, contributions to the Thrift Savings Fund shall not be treated as distributed or made available to an employee or Member nor as a contribution made to the Fund by an employee or Member merely because the employee or Member has, under the provisions of this subchapter and section 8351 of this title, an election whether the contribution will be made to the Thrift Savings Fund or received by the employee or Member in cash.

(b) NONDISCRIMINATION REQUIREMENTS.—Notwithstanding any other provision of law, the Thrift Savings Fund is not subject to the non-discrimination requirements applicable to arrangements described in section 401(k) of title 26, United States Code, or to matching contributions (as described in section 401(m) of title 26, United States Code), so long as it meets the requirements of this section.

(c) Subsection (a) shall not be construed to provide that any amount of the employee's or Member's basic pay which is contributed to the Thrift Savings Fund shall not be included in the term "wages" for the purposes of section 209 of the Social Security Act or section 3121(a) of the Internal Revenue Code of 1986.

(Added Pub. L. 99-335, title I, § 101(a), June 6, 1986, 100 Stat. 557; amended Pub. L. 100-202, § 101(m) [title VI, § 624(b)], Dec. 22, 1987, 101 Stat. 1329-390, 1329-430; Pub. L. 100-647, title I, § 1011A(m)(2), Nov. 10, 1988, 102 Stat. 3483; Pub. L. 102-378, § 2(69), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-353, § 5(e)(5), Oct. 13, 1994, 108 Stat. 3174.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a) and (c), is classified generally to Title 26, Internal Revenue Code.

Section 209 of the Social Security Act, referred to in subsec. (c), is classified to section 409 of Title 42, The Public Health and Welfare.

AMENDMENTS

1994—Subsecs. (a), (c). Pub. L. 103-353 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1992—Subsec. (a)(3). Pub. L. 102-378 inserted "section 401(k)(4)(B) of such Code and" after "subject to".

1988—Subsec. (a)(3). Pub. L. 100-647, which directed the insertion of "401(k)(4)(B) of such Code," after "subsection (b)", could not be executed because of previous amendment by Pub. L. 100-202, § 101(m) [title VI, § 624(b)(1)] which struck out "subsection (b)". See 1987 Amendment note below.

1987—Subsec. (a)(3). Pub. L. 100-202, § 101(m) [title VI, § 624(b)(1)], struck out "the provisions of subsection (b) and" after "subject to".

Subsec. (b). Pub. L. 100-202, § 101(m) [title VI, § 624(b)(2)], added subsec. (b) and struck out former subsec. (b) which consisted of pars. (1) and (2) providing that subsec. (a)(3) not apply to the Thrift Savings Fund unless the Fund meets the antidiscrimination requirements applicable to arrangements described in section 401(k) of title 26 and to matching contributions.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-353 effective with respect to reemployments initiated on or after the first day after the 60-day period beginning Oct. 13, 1994, with transition rules, see section 8 of Pub. L. 103-353, set out as an Effective Date note under section 4301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-378 effective Nov. 10, 1988, see section 9(b)(8) of Pub. L. 102-378, set out as a note under section 6303 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of Title 26, Internal Revenue Code.

§ 8440a. Justices and judges

(a)(1) A justice or judge of the United States as defined by section 451 of title 28 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund. Basic pay does not include an annuity or salary received by a justice or judge who has retired under section 371(a) or (b) or section 372(a) of title 28, United States Code.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to justices and judges making contributions to the Thrift Savings Fund.

(2) The amount contributed by a justice or judge for any pay period shall not exceed the maximum percentage of such justice's or judge's basic pay for such pay period allowable under section 8440f.

(3) No contributions shall be made for the benefit of a justice or judge under section 8432(c) of this title.

(4) Section 8433(b) of this title applies with respect to elections available to any justice or judge who retires under section 371(a) or (b) or section 372(a) of title 28. Retirement under section 371(a) or (b) or section 372(a) of title 28 is a separation from service for the purposes of subchapters III and VII of chapter 84 of this title.

(5) Section 8433(b) of this title applies to any justice or judge who resigns without having met the age and service requirements set forth in section 371(c) of title 28.

(6) The provisions of section 8351(b)(5) of this title shall govern the rights of spouses of jus-

tices or judges contributing to the Thrift Savings Fund under this section.

(7) Notwithstanding paragraphs (4) and (5), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, or resigns without having met the age and service requirements set forth under section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is less than an amount that the Executive Director prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

(Added Pub. L. 100-654, title IV, § 401(a), Nov. 14, 1988, 102 Stat. 3847; amended Pub. L. 101-335, §§ 3(b)(2), 6(b)(2), July 17, 1990, 104 Stat. 320, 323; Pub. L. 102-378, § 2(70), Oct. 2, 1992, 106 Stat. 1355; Pub. L. 103-226, § 9(e), (i)(17), Mar. 30, 1994, 108 Stat. 120, 122; Pub. L. 104-208, div. A, title I, § 101(f) [title VI, § 659 [title II, § 205(a)]]], Sept. 30, 1996, 110 Stat. 3009-314, 3009-372, 3009-377; Pub. L. 106-361, § 2(b)(6), Oct. 27, 2000, 114 Stat. 1401; Pub. L. 106-554, § 1(a)(4) [div. B, title I, § 138(a)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A-233; Pub. L. 108-469, § 1(d)(4), Dec. 21, 2004, 118 Stat. 3892.)

CODIFICATION

Another section 8440a was renumbered section 8440b of this title.

AMENDMENTS

2004—Subsec. (a)(2). Pub. L. 108-469 substituted “as” for “only during a period”.

2000—Subsec. (a)(2). Pub. L. 106-361 substituted “this chapter” for “chapter 84 of this title: *Provided, however*, That a justice or judge may make the first such election within 60 days of the effective date of this section”.

Subsec. (b)(2). Pub. L. 106-554 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The amount contributed by a justice or judge shall not exceed 5 percent of basic pay.”

1996—Subsec. (b)(7). Pub. L. 104-208 substituted “less than an amount that the Executive Director prescribes by regulation” for “\$3,500 or less” and struck out “unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, one of the options available under section 8433(b)” before period at end.

1994—Subsec. (b)(5). Pub. L. 103-226, § 9(e)(1), substituted “Section 8433(b)” for “Section 8433(d)”.

Subsec. (b)(6). Pub. L. 103-226, § 9(i)(17), substituted “section 8351(b)(5)” for “section 8351(b)(7)”.

Subsec. (b)(7), (8). Pub. L. 103-226, § 9(e)(2), added par. (7) and struck out former pars. (7) and (8) which read as follows:

“(7) Notwithstanding paragraph (5), if any justice or judge who elects to make contributions to the Thrift Savings Fund under subsection (a) resigns without having met the age and service requirements set forth in section 371(c) of title 28, and such justice's or judge's nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise in such manner as the Executive Director prescribes, to have the nonforfeitable account balance transferred to an eligible retirement plan as provided in section 8433(e).

“(8) Notwithstanding paragraph (4), if any justice or judge retires under subsection (a) or (b) of section 371 or section 372(a) of title 28, and such justice's or judge's nonforfeitable account balance is \$3,500 or less, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment unless the justice or judge elects, at such time and otherwise

in such manner as the Executive Director prescribes, one of the options available under section 8433(b).”

1992—Subsec. (b)(1). Pub. L. 102-378 substituted “this subchapter and subchapter VII” for “subchapters III and VII of chapter 84 of this title”.

1990—Subsec. (b)(6). Pub. L. 101-335, § 3(b)(2), redesignated par. (7) as (6) and struck out former par. (6) which read as follows: “Sums contributed under this section and earnings attributable to such sums may be invested and reinvested only in the Government Securities Investment Fund established under section 8438(b)(1)(A) of this title.”

Subsec. (b)(7), (8). Pub. L. 101-335, § 6(b)(2), added pars. (7) and (8). Former par. (7) redesignated (6).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-361 effective at the earliest practicable date after Sept. 30, 2000, as determined by the Executive Director in regulations, see section 2(c)(1) of Pub. L. 106-361, set out as a note under section 8432 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-208 effective Sept. 30, 1996, and withdrawals and elections as provided under such amendment to be made at earliest practicable date as determined by Executive Director in regulations, see section 101(f) [title VI, § 659 [title II, § 207]] of Pub. L. 104-208, set out as a note under section 5545a of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-226 effective Mar. 10, 1995, see section 9(j) of Pub. L. 103-226, set out as a note under section 8351 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 3(b)(2) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or as of such earlier date as Executive Director may by regulation prescribe, see section 3(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

Amendment by section 6(b)(2) of Pub. L. 101-335 effective as of second election period described in section 8432(b) of this title beginning after July 17, 1990, or such earlier date as Executive Director may by regulation prescribe, and applicable with respect to separations occurring before, on, or after that effective date, see section 6(c) of Pub. L. 101-335, set out as a note under section 8351 of this title.

§ 8440b. Bankruptcy judges and magistrate judges

(a)(1) A bankruptcy judge or magistrate judge who is covered by section 377 of title 28 or section 2(c) of the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund.

(2) An election may be made under paragraph (1) as provided under section 8432(b) for individuals subject to this chapter.

(b)(1) Except as otherwise provided in this subsection, the provisions of this subchapter and subchapter VII shall apply with respect to bankruptcy judges and magistrate judges who make contributions to the Thrift Savings Fund under subsection (a) of this section.

(2) The amount contributed by a bankruptcy judge or magistrate judge for any pay period shall not exceed the maximum percentage of such bankruptcy judge's or magistrate judge's basic pay for such pay period allowable under section 8440f.